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OGC REVIEW
COMPLETED

OGC 76-1182
5 March 1976

MEMORANDUM FOR: Chief, Policy and Standards Branch/PMCD/OP

SUBJECT: Language for Inclusion in Proposed
Employee Bulletin on FLSA


1. Following is suggested language for inclusion in the referenced bulletin discussed during our phone conversation of last week, requesting employees to be aware of security considerations when exercising their rights under the FLSA.

Security Considerations. As summarized above, the Act permits employees to file complaints about alleged violations of the FLSA internally or directly with the Civil Service Commission. This latter right is designed to ensure that employees need not fear any reprisal by their immediate supervisor or their employing agency for instituting such complaints. However, because of the sensitive nature of employment data, the positions of many of our employees, and the protected nature of Agency files, members of this Agency and the other intelligence organizations are placed in a unique position with respect to filing complaints directly with the Civil Service Commission. Therefore, employees are encouraged to contact the Office of Security prior to filing complaints outside the Agency to resolve any questions or potential security problems. This suggestion is not designed to restrict the employee's statutory rights under the Act, but to facilitate the exercising of the employee's right to institute such a complaint and enhance the possibilities of resolving any existing problems.

2. This statement was drafted on the assumption that it would be placed after a general description and discussion of the rights of an employee under the FLSA. If placed somewhere else within the employee bulletin, it may require some alteration. In such a case, please feel free to make whatever changes you feel are appropriate.

STATINTL

cc: C/PMCD/OS&T


Office of General Counsel
Operations and Management Law Division

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OGC 76-1183
3 March 1976

MEMORANDUM FOR THE RECORD

SUBJECT: Security Aspects - Fair Labor Standards Act

REFERENCE: Memorandum for Chief, Position Management and Compensation Division, from Chief, PMCD/OS&T Branch, Same Subj, dtd 12 Nov 75

1. Subsequent to the receipt of the above-referenced memo, the undersigned contacted [] and discussed the Fair Labor Standards Act (FLSA) and its application to the Agency. He briefed me on previous meetings he had attended with Civil Service Commission representatives which involved the FLSA. We agreed that I would contact Mr. Michael D. Clogston, FLSA Compliance Program Manager of the Civil Service Division, to discuss this problem in greater depth, specifically focusing on security considerations.

2. On 13 January 1976 the undersigned met with Mr. Clogston in his office at the Civil Service Commission. We discussed the application of the FLSA to the Agency and, specifically, the Office of Security's proposal to place a decal on the GPO-FLSA poster explaining an employee's rights and benefits under the Act. This decal invited employees to contact the External Activities Branch of the Office of Security with any questions they may have in connection with contacting the Civil Service Commission. It was hoped that this notice would provide the Agency with information concerning who would be contacting the Civil Service Commission, thereby providing advance notice of potential cover or security problems.

3. Mr. Clogston expressed his opposition to the placement of any decal on the poster. He believed that this might create the impression that the Agency was trying to amend or restrict a statutory right granted by Congress. In addition, the soon-to-be-published guidelines (which will be promulgated in the Federal Personnel Manual) contain exceptionally strong language concerning the preservation of the confidentiality of complaints under FLSA. They specifically emphasize that there is no requirement for an employee to initiate or clear inquiries or complaints through his or her employing agency. I then raised the possibility of

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using a separate distribution to employees (i.e., an employee bulletin) in conjunction with an unadulterated poster to accomplish the purpose of making employees aware of potential security implications in exercising their rights under the FLSA. Mr. Clogston agreed that this would be an appropriate and effective way to accommodate the conflicting considerations. I inquired whether he would feel it necessary to review such a bulletin prior to its publication, and he indicated that it was not necessary.

4. The remainder of the discussions centered upon potential security problems which might develop subsequent to the Civil Service Commission's receipt of a FLSA complaint by an Agency employee. Mr. Clogston briefly explained the investigatory procedures which would be followed by his agency and agreed that a revised procedure may be necessary in the case of the intelligence agencies. He referred on a number of occasions to utilizing the "rule of reason" in such circumstances. He indicated that in all probability the Commission's first response would be a written request to the agency requesting information relating to the complaint and advice concerning resolution of any security problems with respect to the investigation. The agency and the Commission would then proceed to try and accommodate their respective interests. I suggested the idea of a more or less formalized agreement between the Commission and CIA which would establish a procedural framework for the conducting of an FLSA investigation. Mr. Clogston expressed the opinion that he was more inclined to proceed on an informal case-by-case basis, adjusting and accommodating where necessary, the interests of the parties involved. I concluded our discussion by indicating that I would try to get an idea of the extent of the security problem which may result in a FLSA investigation and advise him of any problems which would require additional coordination.

5. Subsequent to my meeting with Mr. Clogston, I contacted Mr. [] and advised him of the results of our meeting. He suggested that I directly contact [] in the Office of Security concerning the results of the meeting and the preparation of any employee bulletin.

6. On 14 January 1976 I contacted [] in the Office of Security and briefed him on my meeting with Mr. Clogston and my discussion with []. He agreed to the concept of an employee bulletin for utilization in conjunction with the FLSA posters. I advised him that I would initiate the preparation of a draft statement for such a bulletin and contact him for comments and suggestions when completed.

[] STATINTL

Office of General Counsel
Operations and Management Law Division

cc: C/PMCD/OS&T

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